Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

		Application No.	Applicant(s)
Offic Action Summary		09/943,875	GENTRY ET AL.
		Examiner	Art Unit	
		VAN H NGUYEN	2126	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Peri d f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _19 August 2004_.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
   closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-16 and 19-36_ is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) _1-16 and 19-36_ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All b)☐ Some * c)☐ None of:

   1. ☐ Certified copies of the priority documents have been received.

   2. ☐ Certified copies of the priority documents have been received in Application No. _____.

   3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
      application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
   Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

1.   Claims 1-16 and 19-36 are presented for examination.

Claim Rejections - 35 USC § 103

2.   The text of those sections of Title 35, U.S. Code not included in this action can be found

in a prior Office action.

3.   Claims 1-5, 8-13, 16, 19-22, 25-30, and 33-34 are rejected under 35 U.S.C. 103(a) as

being unpatentable over **Fleming, III** (U.S. 6,530,018).

4.   As to claim 1, Fleming teaches *(abstract)* the invention substantially as claimed

including a hardware driver install system *(e.g., an installation mechanism)* used in conjunction

with a computer system *(e.g., a computer system)*, the install system apparatus comprising:

means for determining if the hardware device is connected to the computer system

(abstract; col.2, lines 1-15, 21-24; and col.4, lines 54-64); and

means for installing a driver for the hardware device if it is determined that the hardware

device is connected to the computer system *(e.g., installs the current driver on the computer

system; abstract; col.5, lines 25-33; and fig. 3)*.

Fleming does not explicitly teach "means for instructing a user to connect the hardware device if it is determined that the hardware device is not connected to the computer system."

Fleming, however, discloses *taking appropriate action after the detecting step, such as installing the current driver following a reboot (abstract; col.2, lines 25-27; and col.4, lines 54-64).*

It would have been obvious to one of ordinary skill in the art to have also included the step of instructing a user to connect the hardware device if it is determined that the hardware device is not connected to the computer system. By implementing this step, the user will be prompted to connect a hardware device to the system when they want to install a driver for the hardware device.

5.   As to claim 2, Fleming teaches means for determining if a default driver exists for the hardware device *(e.g., a default driver; col.2, lines 31-34; col.3, lines 40-43; and col.5, lines 3-14).*

6.   As to claim 3, while teaching the default driver, the driver, and the hardware device, Fleming does not explicitly teach "replacing the default driver with the driver for the hardware device."

Fleming, however, discloses *"default driver 113 is used until current driver 116 can be installed"* (col.3, lines 3-14).

It would have been obvious to one of ordinary skill in the art to have applied the teaching of Fleming for "replacing the default driver with the driver for the hardware device" in order to provide means for facilitating the installation of the driver on the computer system. Note that the default driver allows the computer system to function in a restricted performance mode until the

current the driver is installed, and if the device is a device that must be used during the retrieval

process, such as a network interface controller, it may not be possible to perform the retrieval

without the default driver.

7.   As to claim 4, Fleming teaches means for acquiring the driver from a network source

(e.g., the system retrieves current driver 116 from server 112 across net work 111; col. 5, lines

14-24 and fig. 3).

8.   As to claim 5, Fleming teaches means for determining if there are a plurality of hardware

devices connected to the computer system *(abstract; and col.4, line 54-col.5, line 14).*

9.   As to claim 8, Fleming teaches means for using a default install system of an operating

system for the computer system when installing the driver for the hardware device *(e.g., default*

driver 113 is used until current driver 116 can be installed; col.3, lines 3-14).

10.   As to claims 9-13 and 16, note the rejection of claims 1-6 and 8 above. Claims 9-13 and

16 are the same as claims 1-6 and 8, except claims 9-13 and 16 are method claims and claims 1-6

and 8 are system claims.

11.   As to claims 19-22, 25, and 26, note the rejection of claims 1-3, 5, 4, and 8, respectively.

Claims 19-22, 25, and 26 are the same as claims 1-3, 5, 4, and 8, except claims 19-22, 25, and 26

are computer readable medium claims and claims 1-3, 5, 4, and 8 are system claims.

12.   As to claim 27, the rejection of claim 1 above is incorporated herein in full. However,

claim 27 further recites a user interface. Inherently, a user interface must be included in the

Fleming's system to notify the user if the device is connected to the computer system, and to

prompt the user to connect the device to the computer system for installing the deriver when the

device is not connected to the computer system.

13.   As to claims 28-30, 33, and 34, note the rejection of claims 2-3, 5, 8, and 4, respectively.

14.   Claims 6-7, 14-15, 23-24, and 31-32 are rejected under 35 U.S.C. 103(a) as being

unpatentable over **Fleming** in view of **Nykanen et al.** (U.S. 6,574,678).

15.   As to claim 6, Fleming does teach means for determining if there are a plurality of

hardware devices connected to the computer system, but does not explicitly teach means for

determining which of the plurality of hardware devices connected to the computer system are to

be removed.

Nykanen teaches means for determining which of the plurality of hardware devices

connected to the computer system are to be removed *(figs 5a-5c and associated text)*.

It would have been obvious to a person of ordinary skill in the art at the time the

invention was made to combine the teachings of Nykanen and Fleming because Nykanen's

teaching would have provided the capability for detecting and identifying the devices connected

to the computer system, and removing the unused devices in the computer system. Therefore,

facilitating the installation of the driver on the computer system.

16.   As to claim 7, Nykanen teaches means for removing the plurality of hardware devices

from a device object that are determined to be removed; and means for removing any shortcut for

the plurality of hardware devices that are determined to be removed from the computer system

(col.6, line 30-col.7, line 56).

17.   As to claims 14-15, note the rejections of claims 6-7 above. Claims 14-15 are the same as

claims 6-7, except claims 14-15 are method claims and claims 6-7 are system claims.

18.   As to claims 23-24, note the rejection of claims 6-7 above. Claims 23-24 are the same as

claims 6-7, except claims 23-24 are computer readable medium claims and claims 6-7 are system

claims.

19.   As to claims 31-32, refer to claims 6-7 above for rejection.

20.   Claims 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Fleming in view of **Udelstein et al.** (U.S. 6,378,128 B1).

21.   As to claim 35, the rejection of claim 1 above is incorporated herein in full. However,

claim 35 further recites: determining if an operating system on the computer includes a Windows

installer service; if it is determined that the operating system does not include a Windows

installer service, then removing any driver for the device provided by the operating system and

setting up the operating system to use a driver provided with the device; if it is determined that

the operating system includes a Windows installer service, then updating any driver for the

device associated with the Windows installer service with a driver provided with the device.

Udelstein teaches determining if an operating system *(e.g., the operating system; col.6,*

lines 24-32) on the computer *(e.g., the target computer system; col.6, lines 24-32)* includes a

Windows installer service *(e.g., a WINDOWS INSTALLER program module; col.6, lines 24-32)*;

if it is determined that the operating system does not include a Windows installer service *(e.g.,*

operable to detect; col.6, lines 29-32), then removing any driver for the device provided by the

operating system and setting up the operating system to use a driver provided with the device

(e.g., install a new application program module; col.6, lines 29-32); if it is determined that the

operating system includes a Windows installer service, then updating any driver for the device

associated with the Windows installer service with a driver provided with the device *(e.g., an*

"intelligent install module 210 is added to the existing WINDOWS INSTALLER program module

to provide functionality for dynamically creating or modifying an install-set; col.6, lines 29-32).

It would have been obvious to a person of ordinary skill in the art at the time the

invention was made to combine the teachings of Udelstein and Fleming because Udelstein's

teaching would have provided the capability for dynamically creating and modifying an install-

set, without user interaction, to accommodate the needs of an individual user and/or the

requirements of an individual computer system.

22.   As to claim 36, note the discussion of claim 35 above for rejection.

Response to Arguments

23.   Applicant's arguments filed August 19th, 2004 have been fully considered but they are

not persuasive.

24.   In the remarks, Applicant argued in substance that: (1) it is impermissible for the

Examiner to look to the Applicant's own teachings for the motivation; (2) there is nothing in

Fleming that suggests instructing a user to connect the hardware device if the device is not

already connected.

25.   Examiner respectfully traverses Applicant's remarks:

A.   As to point (1), in response to Applicant's argument that the Examiner's conclusion of

obviousness is based upon improper hindsight reasoning, it must be recognized that any

judgement on obviousness is in a sense necessarily a reconstruction based upon hindsight

reasoning. But so long as it takes into account only knowledge which was within the level of

ordinary skill at the time the claimed invention was made, and does not include knowledge

gleaned only from the applicant's disclosure, such a reconstruction is proper. *In re McLaughlin,*

443 F.2d 1392; 170 USPQ 209 (CCPA 1971).

B.   As to point (2), the Examiner respectfully responds that Fleming does teach "the system

includes a detection mechanism that detects the presence of the device in a computer system"

(see the abstract). Although Fleming does not specifically teach "instructing a user to connect

the hardware device if the device is not already connected", it is obvious that the main purpose of

"a detection mechanism" is to detect "the presence of the device" and to take an appropriate

action if the device is not connected to the computer system, such as instructing the user to

connect the device to the system.

Conclusion

26.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

27.   A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

28.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to VAN H. NGUYEN whose telephone number is (571) 272-3765.

The examiner can normally be reached on Monday-Thursday from 8:30AM - 6:00PM. The

examiner can also be reached on alternative Friday.

29.   If attempts to reach the examiner by telephone are unsuccessful, the examiner's

        supervisor Meng-Ai An can be

reached on (571) 272-3756.

30.   The fax phone number for the organization where this application or proceeding is

        assigned is 703-872-9306.

31.   Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any response to this action should be mailed to:
Commissioner for patents
P O Box 1450
Alexandria, VA 22313-1450

12/21/04
vhn

SUE LAO
PRIMARY EXAMINER